



Connecticut Bureau of Air Management, Anne Gobin, Acting
Maine Bureau of Air Quality Control, James Brooks
Massachusetts Bureau of Waste Prevention, Barbara Kwetz
New Hampshire Air Resources Division, Robert Scott
New Jersey Division of Air Quality, William O'Sullivan
New York Division of Air Resources, David Shaw
Rhode Island Office of Air Resources, Stephen Majkut
Vermont Air Pollution Control Division, Richard Valentinetti

April 19, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
2109 Rayburn House Office Building

The Honorable John D. Dingell
Ranking Member
Energy and Commerce Committee
2328 Rayburn House Office Building

The Honorable Ralph M. Hall
Chairman
Energy and Air Quality Subcommittee
2405 Rayburn House Office Building

The Honorable Rick Boucher
Ranking Member
Energy and Air Quality Subcommittee
2187 Rayburn House Office Building

Re: Proposed DOD Exemptions from the Clean Air Act

Dear Representatives Barton, Dingell, Hall, and Boucher:

The Northeast States for Coordinated Air Use Management (NESCAUM) wish to go on record opposing efforts by the Department of Defense (DOD) to amend various environmental and public health statutes -- including the Clean Air Act -- to allow broad statutory exemptions that threaten public health protections. We understand that the DOD has previously sought such amendments, and we are pleased that Congress has rejected them. We urge you to continue to do so for these provisions, which were recently introduced into the DOD FY2005 authorization bill.

As part of the DOD's "Range Readiness and Preservation Initiative" (RRPI), DOD is seeking exemptions from Clean Air Act requirements for areas struggling with ground-level ozone smog and particulate pollution. Under the provisions, broadly defined DOD "readiness" activities would be granted three-year exemptions from Clean Air Act General Conformity, a requirement designed to help states meet the health-based National Ambient Air Quality Standards (NAAQS) by ensuring that any anticipated

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emissions increases from a particular project would be offset by lowering emissions through other actions. Furthermore, the provisions would, upon state request, require the U.S. Environmental Protection Agency (EPA) to disregard air pollution caused by military activities in assessing whether an area meets the federal air quality standards. Thus, the EPA must determine that an area has healthful air even if that area is, in fact, violating the ground-level ozone or particulate matter standards as a result of the air pollution from military readiness activities.

The NESCAUM states support the positions iterated by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) in their March 9, 2004 letter to Congress on the DOD's proposed exemptions. We believe that the exemptions that DOD is seeking with respect to the Clean Air Act are unwarranted, will impede states' abilities to attain and maintain the health-based National Ambient Air Quality Standards, and will impose inequitable burdens upon the industries our states regulate, as well as on the public.

To date, we have not seen any evidence that the Clean Air Act has impeded DOD activities. We believe that DOD already has the flexibility it needs to address military readiness concerns, so that any additional exemptions are redundant and unnecessary. Under section 118 of the Clean Air Act, the President may exempt DOD from any requirements of the Act upon a finding that it is of "paramount interest of the United States to do so." In addition, the federal regulations for the General Conformity provisions of the Clean Air Act allow DOD to suspend compliance for up to six months in response to emergencies, which by definition include terrorist activities and military mobilizations. This exemption is renewable every six months through a written determination by DOD. The General Conformity regulations also allow DOD to perform "routine movement of mobile assets, such as ships and aircraft" so long as they do not construct new support facilities.

We do not believe that DOD has demonstrated the need for exemptions beyond what is already provided for in the Clean Air Act or provided any analysis of the potential public health impacts that would result from its activities. We are concerned that the Clean Air Act exemptions sought by DOD would essentially serve to allow routine, non-emergency activities that require the construction of additional support facilities to skirt important public health requirements.

We are also concerned because the scope of the proposed DOD exemptions appears to be nearly unlimited -- military readiness activities are very broadly defined as "all training and operations that relate to combat." Since there is no limit on the definition of what constitutes a particular military readiness activity, multiple re-basing or training activities could be redefined from year to year, thereby allowing successive three-year exemptions from General Conformity requirements.

We are concerned about the potential for exempted DOD activities to create dirty air areas near military bases, where no action would be required by DOD to eliminate the pollution. While the current military circumstances might suggest a relatively smaller

DOD contribution to air pollution, in the years ahead, the situation might change dramatically. Since there is no limit on DOD's potential emissions during the three-year period and the DOD exemption would likely be a permanent fixture in the law, without any potential recourse by citizens and state governments in such areas, the net effect of the proposed DOD exemptions could result in significant unmitigated air pollution.

The provisions will also mislead the public and compromise public health with determinations that air quality in certain areas is healthful when it is not. We believe that this approach undermines the integrity of the health-based National Ambient Air Quality Standards.

We urge you to ensure that the citizenry is afforded the public health protection to which it is entitled, and to continue to oppose unnecessary exemptions from the Clean Air Act. We encourage you to work with the DOD to ensure it avails itself of the appropriate flexibilities that are currently in place.

If you have any questions, do not hesitate to contact me at 617-367-8540. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Kenneth A. Colburn".

Kenneth A. Colburn
Executive Director